DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

Note.— In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

CLINCHFIELD COAL CO. *v.* POWERS.

Nov. 21, 1907.

[59 S. E. 370.]

Specific Performance—Contract—Subject—Certainty—Meeting of Minds.—The agent of defendant's assignor procured an option to purchase from complainant a tract containing 500 acres, more or less, the acreage to be determined by survey. The option was accepted by defendant in accordance with its terms, after which complainant and his wife tendered a deed in execution of their contract as they understood it, describing only the western portion of the tract containing 411 acres, reserving more than 200 acres, which included the improvements and most valuable portions of the tract. There was some evidence that the agent, who was not a general agent, knew that complainant did not intend to sell the entire tract, but that information was not communicated either to defendant or its assignor. Held, that complainant was not entitled to enforce specific performance under the rule that such relief is granted only when the contract is certain; it not being established with certainty that there had been a meeting of minds as to the subject of the contract.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 44, Specific Performance, §§ 61, 62.]

CRAMER et al. *v.* SENGER & TUMER.

Nov. 21, 1907.

[59 S. E. 376.]

1. Fraudulent Conveyances—Husband and Wife—Gift to Wife.—H., who was indebted to C., agreed in writing to give to C.'s wife a specified tract of land. He died in 1896 without having carried out such agreement, whereupon his heirs executed another agreement with C. that he should take possession of the land on condition that he was to have the refusal of the premises at $20 an acre, and, if he declined to buy at that price, whenever the property was offered for sale, he should pay out of the proceeds any debts which he might hold against H.'s estate and any other just claims that he had paid for the estate, with the cost of improvements, etc., such claims to be liens on the property until

satisfied. After this agreement was made C. incurred a debt to complainants, which, while existing before, was not put in judgment until after the land had been conveyed by the widow and heirs of H. to C.'s wife in consideration of claims against H.'s estate in accordance with the agreement between C. and the heirs. Held, that the conveyance to the wife was not pursuant to such agreement, but was fraudulent as against C.'s creditors, and, he having in fact furnished the consideration, the wife having no claims against her father's estate, she held the property in trust for her husband which was properly subject to his debts.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 24, Fraudulent Conveyances, § 345.]

2. Same—Accrual of Claim.—Where a husband was indebted to complainants long before a fraudulent conveyance of property to his wife was executed, it was immaterial to complainants' right to subject such property to their judgment subsequently recovered that there had been no adjustment of the account between the parties until after the conveyance.

MILLER *v.* SIMPSON.

Nov. 21, 1907.

[59 S. E. 378.]

1. Partnership—Contract—Construction.—In order that defendant might obtain complainant's services as manager of a "ready to wear" department, a contract was executed that, in consideration of $1,000 paid by complainant to defendant, they should share in the profits of the department. Complainant agreed to furnish her entire time, and pay expenses of alterations, while defendant was to furnish a like amount of capital, part of which consisted of goods then on hand, also storeroom and the use of clerks to sell goods. Expenses were to be charged to the department separately, the stock was to be taken and profits determined on January 1st of each year. Complainant was to have a drawing account not to exceed $15 a week, which was to be credited with the amounts drawn by complainant, and the amounts used to defray alteration expenses to defendant and all other expenses were to be borne jointly; the remaining profits undivided being credited to the accounts of both parties to be further used in the business, and, in case the department was abolished, the stock on hand was to be sold and an equal division made. Held, that the contract constituted a partnership, and not an agreement by complainant to purchase a right to share in the profits of the business.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 38, Partnership, § 6.]

2. Same—Requisites of Agreement—Participation in Profits.—It is not essential to constitute a partnership that the parties agree to